

# **MEMO**

**To: Interested Parties**

**From: Ways and Means Ranking Member Sander Levin**

**Date: June 24, 2013**

**RE: Preliminary IRS Investigation Update—TIGTA’s  
Failure to Disclose that “Progressives” Were Included  
on the IRS “Be On the Look Out” (BOLO) lists**

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## **Executive Summary**

There are two key updates based on the Ways and Means Committee Democratic staff’s investigation of the Internal Revenue Service’s (IRS) processing of tax-exemption applications:

First, the “Be On the Look Out” lists contained the word “Progressives.” In May 2013, the Treasury Inspector General for Tax Administration (TIGTA) released an audit report stating that the IRS used “inappropriate criteria” to process tax-exemption applications. The Inspector General only disclosed in the audit report that the “Be On the Look Out” lists used by the IRS to screen tax-exemption applications for processing contained the name “Tea Party.” Based on our investigation, it has become clear that the Inspector General failed to inform the Congress that the following category also appears on the same BOLOs that contain the “Tea Party” criteria and even appears on the BOLOs after the “Tea Party” criteria had been removed:

| <b>Category Name in the BOLO</b> | <b>Issue Description in the BOLO</b>   |
|----------------------------------|--|
| <i>Progressives</i>              | <i>Political activities. Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear anti-Republican. You see references to “blue” as being “progressive.”</i> |

Second, certain individuals on our tax staff have reviewed the list of 298 organizations reviewed by TIGTA during its audit and confirmed that there are liberal organizations on the list.

### **Background**

From the beginning, Ways and Means Committee Democrats have all said that the singling out of organizations by name was wrong. The President said it was “outrageous.” At the committee’s first hearing on May 17, each of us on a bipartisan basis condemned the actions within the IRS Exempt Organizations Division and condemned the actions by the IRS leadership who failed to accurately and adequately inform Congress after they had all the facts of what had occurred between 2010 and 2012. We also consistently condemned the gross mismanagement of the IRS Exempt Organizations Division.

I stated at the hearing that “[w]e must seek the truth, not political gain.” We must take a “facts first” approach and hold individuals accountable for their actions. In my opening statements, I said that “[t]his is not a Democratic or Republican issue.” I also stated that we must “ensure that all the facts come to the surface.” We must continue to follow the facts wherever they may lead.

### **Summary of Evidence**

There was clear mismanagement on the part of the IRS Exempt Organizations Division in processing these tax-exemption applications. This mismanagement has now been compounded by

the clear evidence that the Inspector General also mishandled this investigation by failing to reveal that “Progressives” were also on the BOLO list that Determinations Unit employees used to screen applications.

On May 14, TIGTA noted in its audit that its overall objective “was to determine whether allegations were founded that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups’ applications, and 3) requested unnecessary information from targeted groups.” The stated objective was not limited to one specific group (*i.e.*, Tea Party) – rather the objective was to determine if any groups applying for tax-exempt status were targeted.

Based on the recently received information, the Inspector General seriously erred in not making clear in both the audit report and his testimony on this matter that “Tea Party” and “Progressives” were included in the BOLO lists that Determinations Unit employees used to screen applications.

It is now clear that the audit conducted by the Inspector General was fundamentally flawed.

### **Action Needed**

Today, I am calling for three actions that must be taken immediately: (1) the Inspector General of TIGTA must explain his reason for releasing an audit report that omits vital information regarding the processing of tax-exemption applications by the IRS; (2) I am asking Chairman Camp to hold a hearing where the Inspector General can explain the glaring omission in his audit report; and (3) the interviews conducted to date must be re-evaluated and possibly supplemented in light of the information learned today. The Inspector General’s audit served as the basis and impetus for a wide range of Congressional investigations and

this new information shows that the foundation for those investigations has been flawed in a fundamental way.

When the Inspector General had the opportunity to inform Congress that “Progressives” was also on the BOLO list, he did not.

When asked specifically at hearings, he was not forthright.

TIGTA was created to be an independent and “objective” unit to conduct and supervise audits and investigations into tax administration. It cannot inoculate itself from the duty to be objective by including footnotes in reports that essentially state that it did not look at other evidence clearly before it in an audit or investigation. The Inspector General has a duty to follow the facts wherever they may lead.

Further, the recently released information is all the more reason why the Republicans must cease mischaracterizing what we know to date and abandon their strategy that tries to tie the IRS mismanagement of this issue to the White House when there is no evidence that the White House was involved.

### **Update on the Committee’s Investigation**

#### **I. Omission of Vital Information—“Progressives” Was Included on the “Be On the Look Out” (“BOLO”) Lists**

On May 14, 2013, TIGTA issued an audit report entitled “Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review.” With respect to the “inappropriate criteria,” the audit report stated the following on page 6:

EO function officials stated that, in May 2010, the Determinations Unit began developing a spreadsheet that would become known as the “Be On the Look Out” listing (hereafter referred to as the BOLO listing),<sup>15</sup> *which included the emerging issue of Tea Party applications.*

(Emphasis added.) Footnote 15 on page 6 reads as follows:

The BOLO listing includes a consolidated list of emerging issues the EO function identifies for dissemination to Determinations Unit specialists.

On the same page, the audit report also stated the following:

In August 2010, the Determinations Unit distributed the first formal BOLO listing. The criteria in the BOLO listing were Tea Party organizations applying for I.R.C. § 501(c)(3) or I.R.C. § 501(c)(4) status. Based on our review of other BOLO listing criteria, the use of organization names on the BOLO listing is not unique to potential political cases.<sup>16</sup>

Footnote 16 on page 6 reads as follows:

*We did not review the use of other named organizations on the BOLO listing to determine if their use was appropriate.*

(Emphasis added.)

Appendix VII of the TIGTA audit report purports to be a “Comprehensive Timeline of Events.” With respect to this appendix, the audit report states, “The following chart illustrates a timeline of events from February 2010 through July 2012 involving the identification and processing of *potential political cases*.” (Emphasis added.) Although the timeline states that it is a “comprehensive” review of the processing “potential political cases,” the timeline then only includes a chronology of the *narrow* criteria used to select “Tea Party” applications.

Appendix VI of the TIGTA audit report purports to be a “Timeline of Written Criteria for Identifying Potential Political Cases.” With respect to this appendix, the audit report states, “The following illustrates the changes to the written criteria provided to Determinations Unit employees for identifying applications for the team of specialists.” Although the timeline states that it covers the written criteria for identifying seemingly all of the “potential political cases” before the IRS, the audit report then only includes a

chronology of the *narrow* criteria used to select “Tea Party” applications.

Despite the statements in the report that represent that it is a “comprehensive” timeline of criteria used to select potential political cases, the report failed to disclose that the category “Progressives” also was included on the BOLOs. Attached are the “Be On the Look Out” (“BOLO”) lists that have been provided to the Ways and Means Committee by the IRS. The BOLO lists have been redacted in accordance with 26 U.S.C. § 6103. The audit report failed to mention (*i.e.*, omitted) the following categories on the BOLOs:

| <b>Date of BOLO list</b> | <b>Category Name on BOLO list</b> | <b>Issue Description on BOLO list</b>  |
|--------------------------|-----------------------------------|--|
| August 2010*             | <i>Progressives</i>               | <i>Political activities. Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear anti-Republican. You see references to</i>                                |
| November 2010*           | <i>Progressives</i>               | <i>Political activities. Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear anti-Republican. You see references to “blue” as being “progressive.”</i> |
| February 2011*           | <i>Progressives</i>               | <i>Same as above.</i>  |
| March 2011*              | <i>Progressives</i>               | <i>Political activities. Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear anti-Republican. You see references to</i>                                |
| February 2012            | <i>Progressives</i>               | <i>Political activities. Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are</i>   |

|           |                     |  |
|-----------|---------------------|--|
|           |                     | <i>partisan and appear anti-Republican. You see references to “blue” as being “progressive.”</i> |
| June 2012 | <i>Progressives</i> | <i>Same as above.</i>  |
| July 2012 | <i>Progressives</i> | <i>Same as above.</i>  |

The BOLO lists dated August 2010, November 2010, February 2011, and March 2011 (indicated above with an “\*”) also contain the “Tea Party” criteria.

TIGTA’s report ends on May 2012. However, there is other information in 2012 that is relevant to the Congressional investigation. On August 24, 2012, a section of the Internal Revenue Manual (“IRM”) relevant to the Congressional investigation was revised. Within a section entitled “Initial Screening of Cases,” the IRS states:

Screeners are required to check the Be On the Look Out (BOLO) list and Excel spreadsheet that includes the Comprehensive List of Terrorists and Groups and document the results of the checks on the CCR [Case Chronology Record].

On August 24, 2012 (the date of the IRM), the most recent BOLOs with respect to the matter before us read as follows:

| <b>Date of BOLO list</b> | <b>Category Name on BOLO list</b> | <b>Issue Description on BOLO list</b>  |
|--------------------------|-----------------------------------|--|
| July 2012                | <i>Progressives</i>               | <i>Political activities. Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear anti-Republican. You see references to “blue” as being “progressive.”</i> |
| July 2012                | <i>Advocacy Organizations</i>     | <i>Criteria changed to “501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign</i>  |

|  |  |   |
|--|--|---|
|  |  | <i>intervention (raising questions as to exempt purpose and/or excess private benefit.)</i> |
|--|--|---|

While the audit report notes that the “Tea Party” criteria had been removed from the BOLO list in July 2011, the “Progressives” criteria was not removed until April 2013.

II. *Liberal Groups Were Included in the 298 Applications Reviewed by TIGTA*

The TIGTA report states that it “reviewed all 298 applications that had been identified as potential political cases as of May 31, 2012.” (See page 10.) Of the 298 cases reviewed, TIGTA stated that 89 cases were Section 501(c)(3) organizations. (See footnote 31, page 12.)

Of the cases reviewed, TIGTA included in Figure 4 the following breakdown of the potential political cases by organization name:

- 96 were “Tea Party”, “9/12”, or “Patriots” organizations; and
- 202 were “Other.”

There have been many questions about the 202 organizations classified by TIGTA in the “other” category and whether this category includes liberal organizations. The Inspector General was not forthcoming with his answers before the Oversight and Government Reform Committee. His answers did, however, allude to the footnote and other criteria on the BOLOs that support the position that liberal organizations were singled out as well.

When asked whether liberal groups were included in the 298 applications, the Inspector General responded as follows at the Oversight and Government Reform Committee hearing held on this matter on May 22, 2013:

- Q: Oh, one more thing. There were 479 or so of these tea party groups that were targeted in total. Were there any BOLOs issued for progressive groups—liberal groups? Because I’m assuming that your investigation, we can’t see them, but your investigation showed liberal groups flew right through during the same time and got their 501(c)(4)s. They were not stopped. Is that correct?
- Mr. George: Sir, this is a very important question. Please, I beg your indulgence – (inaudible)
- Q: Of course.
- Mr. George: The only “be on the lookout” – that is, BOLO – used to refer cases for political review were the ones that we described within our report. There were other BOLOs used for other purposes. For example, there were lookouts for indicators of known fraud schemes, so they could be referred to the group that handles those issues. For nationwide organizations, there were notes to refer state and local chapters to the same review – reviewers, rather. As we continue our review of this matter, we have recently identified some other BOLOs that raised concerns about political factors. I can’t get into more detail at this time as to the information that is there because it’s still incomplete – that we’ve uncovered, rather, because it’s still incomplete. And there are 6103 issued involved here too. I to provide –
- Q: *So clearly, it’s fair to say, though, that there was a BOLO for tea party, but not a BOLO for MoveOn or progressive?*
- Mr. George: *I’m not in a position to give you a definitive response on that question at this time, Mr. Issa – Mr. Chairman.*
- Q: So you are saying today that there were other 501(c)(4)s, not specific – so much as one other 501(c)(4) not previously identified during your IG audit that were in fact targeted and held in a similar way?
- Mr. George: I cannot give you a definitive answer, sir, at this time. But I certainly will once – (inaudible).

Q: *I only ask if there is at least one. Are you aware of at least one that was targeted using a BOLO that was a 501(c)(4) in which they were targeted politically but did not fall into this current report we have before us? I'm not asking for privileged information. I'm asking for one.*

Mr. George: *No, no, no, no, under the report – the review – the purposes of the audit that we conducted, which was to determine whether they were looked for in the context of political campaign intervention, there were no others.*

On page 7 of the report, TIGTA states, “Determinations Unit employees stated that they considered the Tea Party criterion as a shorthand term for all potential political cases.” The report further states:

According to the Director, Rulings and Agreements, the fact that the team of specialists worked applications that did not involve the Tea Party, Patriots, or 9/12 groups demonstrated that the IRS was not politically biased in its identification of applications for processing by the team of specialists.

*(See page 8.)*

Notably, TIGTA did not attempt to break down in its report the number of organizations in the “Other Category” that were liberal organizations even though it stated that it reviewed all 298 applications. With respect to the transcribed interview of Holly Paz before the Oversight and Government Reform Committee (which has been reviewed by select reporters), she provided the following exchanges with respect to whether liberal organizations were included on the BOLO and in the 298 applications reviewed by TIGTA:

Discussion of groups captured by criteria during the June 2011 timeframe

Q: Did anyone ask whether groups that might identify progressive causes or Democratic causes were being captured in this process?

A: I believe we discussed that, and the sense was that, yes, there was a variety of different political persuasions amongst the groups that were – you know, whose applications were in this bucket of cases.

### Discussion of BOLO

Q: Ms. Paz, you mentioned before the Be on Look Out list, is that something that the IRS usually does?

A: Yes, it is something that came about in summer of 2010 and was a practice in EO Determinations for a variety of issues. There were a number of specifically named organizations and issues that were on there, and at the same time that Tea Party was on there, there were other liberal organizations that were also specifically listed by name.

The BOLOs attached to this memorandum confirm her statements. In addition, certain individuals on the Democratic tax staff of the Ways and Means Committee have reviewed the list of 298 organizations reviewed by TIGTA and confirmed that there are liberal organizations on the list.